Supreme Court, U.S.
FILED
07-424 MAY 30 2007
OFFICE OF THE CLERK

No. ____

IN THE
Supreme Court of the United States

FEMI BOGLE-ASSEGAI,
Petitioner,
v.
STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES CYNTHIA WATTS-ELDER, LEANNE APPLETON, AND DONALD NEWTON
Respondents.

APPENDIX

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September 20, 2007

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Thomas Asreen
ACTING CLERK

Date:

Docket Number:	05-1858-cv
Short Title:	Bogle-Assegai v. Connecticut
DC Docket Number:	02-cv-2292
DC:	CONNECTICUT (NEW HAVEN)
DC Judge:	Honorable Holly Fitzsimmo N S

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 31st day of January two thousand seven.

Femi Bogle-Assegai,

Plaintiff-Appellant,

v.

State of Connecticut, Commission on Human Rights & Opportunities, Cynthia Watts-Elder, I/O as Executive Dir, CHRO, Leanne Appleton, I/O as Dir of Finance of CHRO and Donald Newton, I/O As CHRO Chief of Field Operations,

Defendants-Appellees.

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Femi Bogle Assegai. Upon consideration by the panel that decided the appeal, it is ordered that said petition for rehearing is DENIED.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Thomas Asreen, Acting Clerk

By: _____
Motion Staff Attorney

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - -

August Term, 2005

(Argued: April 27, 2006 Decided: November 29, 2006)

Docket No. 05-1858-cv

FEMI BOGLE-ASSEGAI,

Plaintiff-Appellant

- v. -

STATE OF CONNECTICUT, CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES; And CYNTHIA WATTS-ELDER, in her official capacity as Executive Director, Connecticut Commission on Human Rights and Opportunities, ("CHRO") and LEANNE APPLETON, in her individual and official capacity as Director of Finance of CHRO; and DONALD NEWTON, in his individual and official capacity as CHRO Chief of Field Operations,

Defendants-Appellees.

Before: KEARSE, McLAUGHLIN, and SACK, Circuit Judges.

Appeal from a judgment of the United States District Court for the District of Connecticut, Holly B. Fitzsimmons, Magistrate Judge, dismissing employment discrimination claims, see 42 U.S.C. §§ 1981, 1988; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., on grounds of lack of service of process, Eleventh Amendment immunity, and untimeliness.

Affirmed.

JOSEPHINE SMALLS MILLER, Danbury, Connecticut (Cynthia R. Jennings, The Barrister Law Group, Hartford, Connecticut, on the brief), for Plaintiff-Appellant.

JOSEPH A. JORDANO, Assistant Attorney General, Hartford, Connecticut (Richard Blumenthal, Attorney General of the State of Connecticut, Hartford, Connecticut, on the brief), for Defendants-Appellees.

KEARSE, Circuit Judge:

Plaintiff Femi Bogle-Assegai, a former employee of defendant Connecticut Commission on Human Rights and Opportunities ("CHRO"), appeals from a judgment of the United States District Court for the District of Connecticut, Holly B. Fitzsimmons, Magistrate Judge, dismissing her complaint alleging principally that CHRO and various of its officials discriminated against her and terminated her employment in violation of her rights under 42 U.S.C. § 1981, as enforced through 42 U.S.C. § 1983; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.; and state law. The district court granted defendants' motions to dismiss Bogle-Assegai's §§ 1981 and 1983 claims and her state-law claims on the grounds that (a)

defendants State of Connecticut (the "State"), CHRO, and CHRO employees in their official capacities had Eleventh Amendment immunity against such claims, and (b) the individual defendants had not been served with process in their individual capacities. The court granted summary judgment dismissing Bogle-Assegai's Title VII claims on the ground that they were time-barred because she had not asserted them in an administrative complaint within 180 days of the allegedly unlawful employment actions. On appeal, Bogle-Assegai contends principally (1) that her Title VII claims are not time-barred, and (2) that she should have been given an opportunity to remedy the flaws in the service of process. For the reasons that follow, we affirm.

I. BACKGROUND

Except as indicated below, the facts, as asserted in defendants' motion for summary judgment and admitted by Bogle-Assegai in response to that motion, include the following.

A. The Parties and the Course of Bogle-Assegai's Employment

Bogle-Assegai, an African-American of Jamaican descent, was first employed by CHRO in the early 1990s as an investigator, initially in a provisional position and thereafter in a permanent position. In 1995, she was promoted to be regional manager of CHRO's office in Bridgeport; in 1997, she became regional manager of its Waterbury office.

Defendant Cynthia Watts-Elder was executive director of CHRO from March 1999 until August 2003. Defendant Leanne Appleton was CHRO's fiscal administrative supervisor from January 1994 until 2004.

Defendant Donald Newton, a CHRO employee for more than 30 years, began serving as its chief of field operations in 1999. In that capacity, he supervised CHRO's regional managers. He continually reminded all regional managers, including Bogle-Assegai, that

they were expected to be at work every day in accordance with their approved schedules.

Bogle-Assegai, in her two positions as manager of CHRO regional offices, was responsible for supervising the staffs and operations of those offices. Her scheduled working hours were 8 a.m. to 5 p.m. In early 2001, Newton questioned Bogle-Assegai about a time sheet representing that she had worked eight hours on January 26, 2001, a day on which Newton had telephoned her office at 10 a.m. and been informed that she was not in. Bogle-Assegai responded that she had in fact been in the office when Newton called, because she had arrived at work that day at 9:30 a.m. (not by 8 a.m. as her schedule required). Newton sought additional information to shed light on the discrepancy between Bogle-Assegai's insistence that she had been in her office by 9:30 a.m. and the staff member's statement that Bogle-Assegai had not arrived by a.m.

As Bogle-Assegai had an official parking space in a garage with an electronic swipe-card access system, Newton asked Appleton to obtain the access-card records for January 26, 2001, from the garage operator. She did so, and the records for that date showed that Bogle-Assegai had arrived in the garage at 10:30 a.m. Further, other access-card records, whose accuracy Bogle-Assegai does not concede, showed numerous occasions when Bogle-Assegai arrived several hours late for work, occasions when she left work before the scheduled end of the day, and occasions when she both arrived late and left early. For example, for the period November 13, 2000, through February 22, 2001--which encompassed 68 non-holiday weekdays--the access-card records showed that Bogle-Assegai arrived more than one hour late 34 times, including 15 days on which she arrived more than two hours late. After a review of these records, Watts-Elder requested an audit of all CHRO employee time sheets.

Examination of Bogle-Assegai's time sheets revealed numerous hours claimed as work time that were contradicted by the garage access card records of her times of arrival and departure.

On March 1, 2001, Watts-Elder informed Bogle-Assegai in writing that an investigation of her time records had been conducted and that, based on that investigation, CHRO was considering formal discipline, including dismissal. CHRO held a formal hearing on March 12; Bogle-Assegai attended, but she refused to participate or answer questions. She requested and was granted an opportunity to provide a written response; but her response provided no information addressing the discrepancies between her time sheets and the garage access-card data.

On March 29, 2001, Bogle-Assegai received a letter from Watts-Elder, stating that Bogle-Assegai's employment with CHRO would be terminated effective April 12, 2001. (See Letter from Watts Elder to Bogle-

Assegai dated March 29, 2001 ("Termination Letter").) The Termination Letter also informed Bogle-Assegai that "[a]lthough your dismissal will be effective April 12, 2001, and you will be paid through that date, from this day forward, you will neither be expected (nor authorized) to report to work." (Id. at 1.) The letter stated that Bogle-Assegai was being dismissed for the good of CHRO, "as a result of [her] fraudulent use of state time." (Id.)

On October 1, 2001, Bogle-Assegai filed an administrative complaint with the United States Equal Employment Opportunity Commission ("EEOC"). She thereafter received a right-to-sue letter.

B. The Present Action and the Motions To Dismiss

Bogle-Assegai commenced the present action in December 2002 against the State and CHRO, against Watts-Elder in her official capacity, and against Appleton and Newton in their official and individual

capacities, alleging that Bogle-Assegai had been the victim of discrimination on the basis of race, color, and national origin. The complaint alleged that the State and CHRO had subjected her to a hostile work environment and terminated her employment in violation of Title VII. Invoking 42 U.S.C. § 1983, it alleged that defendants had discriminated against Bogle-Assegai on the basis of race, color, and national origin in violation of 42 U.S.C. § 1981 and her right to equal protection. The complaint also alleged that defendants' conduct violated the Connecticut Fair Employment Practices Act ("CFEPA"), Conn. Gen. Stat. §§ 46a-70, 46a-71. The parties consented to have the case assigned to a magistrate judge for all purposes.

Following discovery, defendants moved to dismiss Bogle-Assegai's claims on various grounds. Appleton and Newton, who in their amended answer to the complaint had alleged insufficiency of service of

Process, sought dismissal pursuant to Fed. R. Civ. P. 12(b)(5) of the claims asserted against them in their individual capacities, arguing that they had not been served personally. They submitted affidavits stating that they had been served only through the office of the State Attorney General and that they had not authorized that office to accept service on their behalf. In addition, all defendants moved pursuant to Fed. R. Civ. P. 56 for summary judgment dismissing Bogle-Assegai's §§ 1981 and 1983 claims against the State, CHRO, and the individual defendants in their official capacities on the ground that those claims were barred by the Eleventh Amendment. Defendants contended that the Eleventh Amendment also barred Bogle-Assegai's pursuit of her state law claims in federal court, as "the Connecticut legislature only authorized suit in the Connecticut Superior Court" on such claims, "not in the federal court." (Defendants' Memorandum in Support of Their Motion for Summary Judgment ("Defendants'

Summary Judgment Memorandum") at 39 (emphasis in original).)

Defendants sought summary judgment dismissing Bogle-Assegai's Title VII claims on the ground that they were time-barred because she had not filed her administrative charge with the EEOC within the 180-day period specified by 42 U.S.C. § 2000e-5 (e)(1) for filings with the EEOC. Defendants noted that the period for Bogle-Assegai to file an administrative claim of discriminatory discharge began on the date on which she received notification that her employment would thereafter be terminated (see Defendants' Summary Judgment Memorandum at 23 (citing Delaware State College v. Ricks, 449 U.S. 250 (1980)); that Bogle-Assegai had received formal notice of termination on March 29, 2001; and that she had filed her charge with the EEOC on October 1, 2001, more than 180 days later. Defendants observed that § 2000e-5(e)(1) provides that the filing period is 300 days rather than

180 days where a claimant has filed her claims with a state or local agency, but they pointed out that Bogle-Assegai

> Did not institute proceedings with a state or local agency (i.e. CHRO) with authority to grant relief in compliance with 42 [U.]S.C. § 2000e-5 (e), nor did the EEOC defer the Complainant's charge to the state agency... in Connecticut for an investigation. Therefore, the appropriate limitations period is 180 days from March 29, 2001. . . .
>
> Since there was no dual filing with both CHRO and EEOC (it was filed only with EEOC), the plaintiff is not entitled to 300 days and her Title VII claim is untimely and must be dismissed for this reason [among others]. National RR Passenger Corp. v. Morgan, 536 U.S. 101 . . . (2002).

(Defendants' Summary Judgment Memorandum at 24 (emphases in original).)

Defendants also argued that Bogle-Assegai could not present a prima facie case of prohibited discrimination, asserting, inter alia, that her fraudulent reporting of time worked had been the sole reason for her dismissal. (See id. at 25-31; see also Defendants' Rule 56(a)1 Statement of Facts ¶ 97 ("Plaintiff was terminated for falsifying her time records and the theft of state time."); Plaintiff's Rule 56 (B) 1 Statement of Facts ¶ 97 ("Admit.").)

Bogle-Assegai opposed defendants' motions to dismiss, arguing principally that she could present a prima facie case of discrimination. As to the motions of Appleton and Newton to dismiss the

individual-capacity claims asserted against them, however, Bogle-Assegai admitted that those defendants had not been personally served and that they had not authorized anyone to accept personal service on their behalf (see Defendants' Rule 56(a)1 Statement of Facts ¶¶ 5, 7; Plaintiff's Rule 56 (B)1 Statement of Facts ¶¶ 5, 7), and she did not offer any argument as to why the individual-capacity claims against them should not be dismissed for lack of service of process. Nor did Bogle-Assegai offer any argument as to why the State, CHRO, and the individual defendants in their official capacities did not have Eleventh Amendment immunity with respect to her §§ 1981 and 1983 claims or her state-law claims as asserted in this action.

With respect to defendants' contention that her Title VII claims were time-barred, Bogle-Assegai argued as follows:

> The defendants argue that the statute began to run on March 29, 2001, when Mrs. Bogle-Assegai was informed that she would be terminated. Mrs. Bogle- Assegai suggests that the court should not use the date that the defendant indicates she "would" be terminated; but rather the date that she was in fact terminated. Mrs. Bogle-Assegai was effectively terminated April 12, 2001. Further, the question whether a court may, for purposes of determining liability, review all such conduct, including those acts that occur outside the filing period, turns on the statutory requirement that a charge be filed within a certain number of days "after the alleged unlawful employment practice occurred." Because such a claim is composed of a series of separate acts that collectively constitute one "unlawful employment practice," it does not

> matter that some of the component acts fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered for the purposes of determining liability. National Railroad Passenger Corporation v. Morgan, 536 U.S. 101 (2002).

(Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment ("Bogle-Assegai Memorandum Opposing Summary Judgment") at 5-6.)

C. The Decision of the District Court

In a Ruling on Motion for Summary Judgment, dated March 10, 2005 ("District Court Opinion"), the district court granted defendants' motions and dismissed the complaint. The court first granted the motion to dismiss the claims asserted against Appleton and Newton in their individual capacities, noting that it was undisputed that process had been served on them only by service on the Office of the Attorney General. See District Court Opinion at 5, 7. The court held that, as those defendants had not authorized anyone to accept

service of process for them in their individual capacities, service on a State office was insufficient to constitute personal service on them for claims against them in their individual capacities.

The district court next concluded that the Eleventh Amendment barred Bogle-Assegai's claims under §§ 1981 and 1983 against the State, CHRO, and the individual defendants in their official capacities, holding that the State had not waived its sovereign immunity and that "Congress's enactment of § 1981 and § 1983 did not override the immunity that the states and their agencies enjoy under the Eleventh Amendment." Id. at 9. The court ruled that the Eleventh Amendment also required the dismissal of Bogle-Assegai's state-law claims. The court noted that the State had "waived its immunity to suit in state court for CFE[P]A claims. But it has not clearly expressed a waiver to suit in

federal court." Id. (internal quotation marks omitted).

Finally, the district court concluded that Bogle-Assegai's Title VII claims were untimely. The court stated that Title VII requires a plaintiff to file an administrative complaint with the EEOC "within one hundred and eighty days after the alleged unlawful employment practice occurred," 42 U.S.C. § 2000e-5 (e); and that a claim of discriminatory termination of employment "accrues on the date the termination decision is made and communicated to the employee," District Court Opinion at 10-11 (citing Delaware State College v. Ricks, 44 9 44 9 U.S. at 2 58). The court found that

> [i]n this case, plaintiff received her formal notice of termination on March 29, 2001. . . . The termination notice stated that she was no longer authorized to report to work after March 29, 2001. . . Her administrative charge was filed on October 1, 2001, 186 days following her formal notice of termination. . . . Plaintiff's contention that the limitations period begins to run as of the effective

> date of her termination, April 12, 2001, is unsupported by the case law.

District Court Opinion at 11.

The district court noted that "[under certain circumstances, the [180-day] filing period is extended to three hundred (300) days," i.e., where "the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from" the alleged "unlawful employment practice," id. at 10 n.7, but that "[here, plaintiff only filed a claim with the EEOC; thus the 180 day limitations period applies," id. The court found that there was no evidence of a "continuing violation" that could extend the 180-day filing period.

Judgment was entered dismissing the complaint, and this appeal followed.

II. DISCUSSION

On appeal, Bogle-Assegai contends principally that the district court erred in dismissing

her Title VII claims as time- barred, arguing that they were subject to the 300-day, rather than the 180-day, filing period. She also contends, inter alia, that the court should not have dismissed her claims against Appleton and Newton in their individual capacities but, at worst, should have given her an extension of time to effect personal service on them. We are unpersuaded.

A. The Filing Period Applicable to the Title VII Claims

Bogle-Assegai contends that the district court erred in dismissing her Title VII claims as untimely, arguing principally that the applicable period for the filing of her administrative charge, which she filed 186 days after she received the Termination Letter, was not 180 days but 300 days. She argues that the State has a work-sharing agreement with the EEOC, and that under such agreements the filing of an administrative charge with either the EEOC or the State agency (here CHRO) is deemed a filing with each agency--a dual filing--and is timely if made within 300 days. We reject this contention because it was not raised in the district court and because Bogle-Assegai has failed to present any reasonable ground for its consideration by this Court.

[I]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal." Greene v. United States, 13 F.3d 577, 586 (2d Cir. 1994). "However, because th[is] rule

is prudential, not jurisdictional, we have discretion to consider waived arguments," Sniado v. Bank Austria AG, 378 F.3d 210, 213 (2d Cir.), vacated on other grounds, 542 U.S. 917 (2004), and "[w]e have exercised this discretion where necessary to avoid a manifest injustice or where the argument presents a question of law and there is no need for additional fact finding," Allianz Insurance Co. v. Lerner, 416 F.3d 109, 114 (2d Cir. 2005) (internal quotation marks omitted). Nonetheless, the circumstances normally "do not militate in favor of an exercise of discretion to address . . . new arguments on appeal" where those arguments were "available to the [parties] below" and they "proffer no reason for their failure to raise the arguments below." Id.

It is clear that Bogle-Assegai did not make her present argument to the district court, although she had ample incentive to do so. Defendants' motion for summary judgment asserted that "there was no dual

filing with both CHRO and EEOC (it was filed only with EEOC)," and thus that "plaintiff is not entitled to 300 days and her Title VII claim is untimely and must be dismissed . . . ." (Defendants' Summary Judgment Memorandum at 24 (emphases in original)). As described in Part I.B. above, Bogle-Assegai's response to this untimeliness contention made no reference to a work-sharing agreement, or to the concept of dual filing, or to any possibility that the applicable period was 300 days. Her memorandum argued only that defendants had used the wrong starting date for calculating the 180-day period and that the 180-day deadline had been met. (See Bogle-Assegai Memorandum Opposing Summary Judgment at 5 ("the court should not use the [March 29] date that the defendant indicates she 'would' be terminated; but rather the date that she was in fact .... effectively terminated [,] April 12").)

At oral argument of this appeal, we asked counsel to review the record and inform this Court whether Bogle-Assegai had in fact argued in the district court that the 300-day filing period applied to her claims. In response, Bogle-Assegai's counsel submitted a letter stating that "counsel for Plaintiff-Appellant has made a diligent search of the record below and finds that with regard to the 300-day filing rule, Plaintiff-Appellant did not specifically argue the 300-day rule." (Letter from Bogle-Assegai's attorney Josephine Smalls Miller to this Court dated April 28, 2006 ("Miller Letter").

Bogle-Assegai's counsel argued, however, that the complaint's citation of 42 U.S.C. § 2000e-5, which "provides for the 180-day filing period and the 300-day filing period in deferral states .... was sufficient to raise the issue for all subsequent purposes." (Miller Letter.) We disagree. The mere citation to a statute that provides alternative filing periods, the applicability of

each turning on whether the EEOC has or does not have a work sharing agreement with the state agency, does not constitute an assertion that there in fact existed such an agreement at the pertinent time and that the longer period applies. We see nothing in the record to indicate that Bogle-Assegai raised the issue of the existence of a work-sharing agreement before the district court or that she in any way suggested to that court that the filing period applicable to her was 300 days.

Bogle-Assegai urges us nonetheless to entertain her present 300-day contention, arguing that we should take judicial notice that the EEOC regularly enters into such work-sharing agreements, that the existence of such an agreement presents an issue that is purely legal, and that CHRO should not be allowed to deny the existence of a work-sharing agreement on which she relied. These arguments are meritless.

Bogle-Assegai's contention that "[t]his court may take judicial notice of the fact that the [EEOC]

regularly enters into work-sharing agreements with state fair employment practices [sic]" (Bogle-Assegai reply brief on appeal at 2 (emphasis added)) is not a sound basis for consideration of her new argument. Even if we were to take judicial notice of that practice in general, it would not ineluctably follow that there existed such an agreement between the EEOC and CHRO on October 1, 2001, in particular.

Further, despite Bogle-Assegai's assertion that "the issue is purely legal and there is no need for additional fact-finding" (id. at 1 (internal quotation marks omitted)), the question of whether there existed a work-sharing agreement between the EEOC and CHRO on October 1, 2001, is a question of fact, not a question of law. Defendants state that no such agreement was in effect on that date (see Defendants' brief on appeal at 9 n.2); and if Bogle-Assegai had proffered any evidence that such an agreement did in fact exist on that date, there plainly would be a need for factfinding.

Moreover, Bogle-Assegai has not given this Court any indication that she would be able to offer evidence that in fact such an agreement existed at the time she filed her administrative charge. Her brief repeatedly refers to and purports to quote "the work-sharing agreement" (emphasis added) between the EEOC and CHRO, as if the existence of such an agreement at the pertinent time were established (see, e.g., Bogle-Assegai brief on appeal at 15 ("In the instant case, the relevant portions of the work-sharing agreement between the EEOC and CHRO state [] . . ."); see also id. at 17 n.2,19, 29; Bogle-Assegai reply brief on appeal at 1, 3, 5). But not one of these quotes or references is accompanied by a citation to an agreement or to any evidence.

Bogle-Assegai calls our attention to the decision in Lewis v. Connecticut Department of Corrections, 355 F.Supp.2d 607 (D. Conn. 2005) ("Lewis"), as an indication that there existed a work sharing agreement

between the EEOC and CHRO. That case does not, however, show that such an agreement existed at the time pertinent to Bogle-Assegai. The Lewis court noted that the work-sharing agreement that had been submitted to that court by that plaintiff stated:

> Charges that are received by the [CHRO], whether in person or by mail, and jurisdictional with the EEOC and timely filed by the charging party or his/her representative will be automatically dual-filed with the EEOC and vice versa. . . .
>
> FY 2001 EEOC/FEPA Worksharing Agreement Between Connecticut Commission on Human Rights and Opportunities and Equal Employment Opportunity Commission, Pl's Index of Evidence in Supp. of Objection to Summ. J. . . .

355 F.Supp.2d at 615 n.4 (emphasis omitted). As cited, however, the document quoted by the Lewis district court was a "FY 2001" work- sharing agreement, and regardless of whether "FY 2001" referred to the fiscal year of Connecticut or to that of the federal government, it did not encompass October 1, 2001, the date on which Bogle-Assegai's administrative charge was filed. Fiscal years of Connecticut end on June 30 of each calendar year, see Conn. Gen. Stat. § 4-35 (2006);

fiscal years of the United States end on September 30 of each calendar year, see Bill Heniff Jr., Cong. Research Serv., The Federal Fiscal Year 1 (2003), available at http://www.rules.house.gov/archives/crs_reports.htm; and "[e]ach fiscal year is identified by the calendar year in which it ends and commonly is referred to as 'FY.' For example, [federal] FY2003 began October 1, 2002, and ends September 30, 2003," id. (emphasis added) ; see also Memorandum from the Comptroller of the State of Connecticut on Fiscal Year 2006 Year-End Instructions (2006), available at http://www.osc.state.ct.us/2006memos/fiscalyearend/fyeinstructions.htm (describing monies deposited prior to July 1, 2006 as "Fiscal Year 2006" receipts) . Thus, the Connecticut FY 2001 ran from July 1, 2000, through June 30, 2001; the United States FY 2001 ran from October 1, 2000, through September 30, 2001; and whichever government's "FY 2001" was referred to in the title of the work-sharing agreement quoted in

Lewis, that FY ended before the filing of Bogle-Assegai's administrative charge with the EEOC on October 1, 2001.

Finally, Bogle-Assegai's argument that "CHRO should not be permitted to work an injustice upon claimants, such as Plaintiff- Appellant, who relied upon the existent [sic] of the charge processing agreement" (Bogle-Assegai reply brief on appeal at 4-5 (emphasis added)) fails for lack of any evidence whatever to support its factual premise. Bogle-Assegai, in filing her administrative charge 186 days after her receipt of the Termination Letter, cannot be found to have relied on the existence of a work-sharing agreement. Had she so relied, she would have argued the existence of such an agreement in the district court. Instead, she argued that the 180 days began to run on the effective date of termination rather than on the earlier date of notice of termination. And even after the district court granted summary judgment dismissing the Title VII claims,

stating that "the 180 day limitations period applies," District Court Opinion at 10 n.7, Bogle-Assegai did not move for reargument on the ground that the applicable period was 300 days or that there was a work-sharing agreement. Bogle-Assegai did move in November 2005 to reopen the judgment pursuant to Fed. R. Civ. P. 60(b), but she did so on entirely different grounds.

In sum, faced with a summary judgment motion expressly asserting that her charge had not been dually filed with the state agency and that the 300-day filing period therefore did not apply to her claims, Bogle-Assegai had every incentive and opportunity to contest that argument. She made no argument to the district court in opposition. And in arguing to this Court that the 300-day period is applicable, she has proffered no reason for her failure to make that argument in the district court and has pointed to no evidence that would support her factual premises. In the circumstances, appellate consideration of her unpreserved argument is

unwarranted. We affirm the district court's dismissal of Bogle-Assegai's Title VII claims on the ground that her administrative charge was not timely filed.

B. The Dismissals for Improper Service of Process

Bogle-Assegai contends that the district court erred in dismissing her claims against Appleton and Newton in their individual capacities for improper service of process, arguing that those defendants had actual notice of her claims and did not show that the improper service caused them prejudice. She also contends that the district court should have given her additional time pursuant to Fed. R. Civ. P. 4 (m) to affect service on them personally. Her contentions lack merit.

Rule 4(e) of the Federal Rules of Civil Procedure states in pertinent part that

> [u]nless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed . . . may be affected in any judicial district of the United States:

> (1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or
>
> (2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e). In the present case, Bogle-Assegai conceded that Appleton and Newton had not been served personally and that they had not authorized anyone to accept personal service on their behalf. Hence Bogle-Assegai did not meet the requirements of Rule 4(e)(2) and would have been able to show that service was proper only if Connecticut law permitted service on a defendant in his or her individual capacity by serving the Attorney General.

Connecticut law, however, provides that delivery to the Attorney General constitutes service on

an individual state officer or employee "as" an officer or employee:

> Service of civil process in any civil action or proceeding maintainable against . . . the state or ... any officer, servant, agent or employee of the state or of any such institution, board, commission, department or administrative tribunal, as such, may be made by leaving a true and attested copy of the process, including the declaration or complaint, with the Attorney General or at his office in Hartford.

Conn. Gen. Stat. § 52-64 (2005) (emphases added). This provision on its face does not authorize service through the Attorney General's office on an individual State employee in his or her individual capacity.

With respect to an individual who is an officer or employee of the State but is not sued as such, Connecticut law requires that service be made by "leaving [the summons and complaint] with the defendant[] or at his usual place of abode." Conn. Gen. Stat. § 52-57(a) (emphasis added). See, e.g., Banerjee v. Roberts, 641 F. Supp. 1093, 1099 (D. Conn. 1986)

(service "through the Connecticut Attorney General" sufficed to serve the "defendants in their official capacities" but was "not" a "method[] authorized" for "serv[ing them] with process in their individual capacities"); cf. Armstrong v. Sears, 33 F.3d 182, 186-87 (2d Cir. 1994) ("in a Bivens case, personal service should be made upon the individual defendant in accordance with Rule 4(e) instead of upon that individual as a government officer in accordance with Rule 4 (i) (2)" (emphasis in original)) . Accordingly, service on Appleton and Newton was not properly affected on them in their individual capacities.

Bogle-Assegai contends, however, that the district court should simply have given her additional time pursuant to Rule 4 (m) to affect service on Appleton and Newton personally. That Rule provides, in pertinent part, as follows:

> If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff,

> shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4 (m) (emphases added); see, e.g., Romandette v. Weetabix Co., 807 F.2d 309, 311 (2d Cir. 1986) ("By the explicit terms of Rule 4(j) [predecessor to the present Rule 4(m), see Fed. R. Civ. P. 4 Advisory Committee Note (1993)], the court can disregard a failure to meet the 120-day limit if the plaintiff can show 'good cause why such service was not made.'").

Rule 4 (m) provides little relief for Bogle-Assegai. Appleton and Newton raised the matter of improper service in their amended answer to the complaint in July 2003, and they requested dismissal on that ground in September 2004. In response to the motion to dismiss, Bogle-Assegai conceded that those defendants had not been properly served in their individual capacities; but she offered no excuse whatever for the defective service. Further, despite

having been informed that Appleton and Newton objected to the improper service at least as early as July 2003, and despite the continued pendency of the lawsuit until March 2005, Bogle-Assegai never attempted to remedy the defect by asking the district court to extend her time to effect personal service. It is plain therefore that Bogle-Assegai did not make the showing of good cause that could have allowed the district court, in accordance with Rule 4(m), to extend her time to effect proper service.

Although Bogle-Assegai (a) relies on Romandette v. Weetabix Co. for the proposition that defective service must be excused where the defendant has received actual notice and has shown no prejudice, and (b) suggests that she was not required to show good cause in order to be given an extension of time to make proper service, her reliance is misplaced and her suggestion is unsupported by any authority of this Court. In Romandette, in which process had been

mailed to the defendant rather than served personally, Romandette was an incarcerated pro se litigant who was "entitled to rely on service by the U.S. Marshals," 807 F.2d at 311. He had "timely requested that the Marshals effect personal service," and the Marshals Service "had indicated that it would personally serve" the defendant. Id. at 310. Clearly, "Romandette had done everything in his power to effect personal service through the Marshal[]s Service," and we concluded that he "plainly exhibited good cause," id. at 311. Bogle-Assegai has not called to our attention any case in which this Court has ruled that the good-cause requirement specified in Rule 4 (m) may be disregarded, and we are aware of no such case.

> In any event, Bogle-Assegai, who was neither a pro se litigant nor incarcerated, made no showing whatever as to any effort on her part to effect personal service on Appleton and Newton. And given that she also made no effort to show good cause for her failure and never requested an extension of time during the 600-odd days when the case was pending after she first learned of the Appleton/Newton objections to service, we hardly think an extension of the 120-day period, in lieu of

dismissal, could have been an extension for "an appropriate period." Accordingly, we see no error or abuse of discretion in the district court's decision to dismiss.

C. Other Contentions

Bogle-Assegai makes other arguments in her brief on appeal that do not require extended discussion. She contends, inter alia, that the district court erred in dismissing her §§ 1981 and 1983 claims, arguing that they were "timely filed" (Bogle-Assegai brief on appeal at 24) as they do not require pre-suit administrative proceedings and are governed by a three-year statute of limitations (see id. at 24-25) . The district court did not, however, dismiss those claims on the ground that they were time-barred. The §§ 1981 and 1983 claims were dismissed on the ground that as to those claims the State, CHRO, and the individual defendants in their official capacities were entitled to Eleventh Amendment immunity. Bogle-Assegai has presented no argument disputing that immunity, either in the district court or on this appeal.

Bogle-Assegai also argues that the State, CHRO, and the individual defendants in their official capacities are not entitled to Eleventh Amendment immunity with respect to her claims under Title VII. However, the district court did not dismiss Bogle-Assegai's Title VII claims on the ground of Eleventh Amendment immunity but rather, as discussed in Parts I.e. and II.A. above, on the ground that Bogle-Assegai's filing of her administrative complaint with the EEOC was untimely.

Bogle-Assegai's arguments going to the merits of her claims of discriminatory and disparate treatment are moot in light of the dismissals on the grounds of improper service, sovereign immunity, and untimeliness.

Finally, we note that Bogle-Assegai's briefs on appeal do not challenge the dismissal of her state-law claims in any respect. Thus, the dismissal of those claims stands as well.

CONCLUSION

We have considered all of Bogle-Assegai's arguments on this appeal to the extent that they are properly before us, and we have found them to be without merit. The judgment of the district court is affirmed.

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT .OF CONNECTICUT

FEMI BOGLE-ASSEGAI	:	
v.	:	CIV.NO.3.02CV2292(HBF)
STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, CYNTHIA WATTS-ELDER, LEANNE APPLETON, and DONALD NEWTON	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

Plaintiff, Femi Bogle-Assegai, brings this five count complaint for unlawful termination Of her employment under 42 U.S.C. §2000e et seq. (Title VII), 42 U.S.C. §§1981, 1983 (civil rights) and Sections §§46a-58(a), 46a-60 (a) (1) , (4), (5), 46a-70 and 4 6a-71 of the Connecticut Fair Employment Practices Act ("CFEPA").[1] She alleges that her former employer and co-workers discriminated

[1] Defendants are the State of Connecticut Commission on Human Rights and Opportunities ("CHRO"); Cynthia Watts-Elder, the former CHRO Executive Director, sued in her official capacity; Leanne Appleton, CHRO Director of Finance, sued in her individual and official capacities; and Donald Newton, CHRO Chief of Filed Operations, sued in his individual and official capacities.

against her in her employment on the basis of race, color, national origin and religion.[2]

Pending is all defendants' Motion for Summary Judgment [Doc. #45]. For the reasons that follow, defendants' motion is GRANTED.

STANDARD OF LAW

Summary judgment is appropriate where there exists no genuine issue of material fact and, based on the undisputed facts, the moving party is entitled to judgment as a matter of law. See D'Amico v: City of New York, 132 F.3d 145, 149 (2d Cir. 1998); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, (1986). The non-moving party may not rely on conclusory allegations or unsubstantiated speculation. See D'Amico, 132 F.3d at 149. Instead, the non-moving party must produce specific, particularized facts indicating that a genuine factual issue

[2] In Count One, plaintiff alleges discriminatory employment practices against the CHRO pursuant to Title VII, 42 U.S.C. §2000e (2) and (3), Conn. Gen. Stat. §§46a 58(a), 46a-60(a) (1), (4), (5). In Count Two, plaintiff alleges discriminatory or disparate treatment by Watts-Elder, Appleton and Newton in violation of 42 U.S.C. §1981, 1983, and Article First, §20 of the Connecticut Constitution. In Count Three, plaintiff alleges a hostile work environment against the CHRO. Count Four contains

exists. See Wright v. Coughlin, 132 F.3d 133, 137 (2d Cir. 1998). To defeat summary judgment, "there must be evidence on which the jury could reasonably find for the [non-movant]." Anderson, 477 U.S. at 252. If the evidence produced by the non-moving party is merely colorable or is not significantly probative, summary judgment may be granted. See id. at 249-50.

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an allegation of discriminatory employment practices against Watts-Elder, Appleton and Newton in violation of 42 U.S.C. §1981, the equal protection clause of the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. §1983,- and Article First, §8 of the Connecticut Constitution. Finally, in Count Five, plaintiff alleges a violation of Conn. Gen. Stat. §46a-70 ("guarantee of equal employment in state agencies"), Conn. Gen. Stat. §4 6A-71 ("discriminatory practices by state agencies prohibited") and seek relief pursuant to Conn. Gen. Stat. §46a-99.

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Pursuant to D. Conn. L. Civ. R. 56(a) (3),

Each statement of-material fact in a Local Rule 56 (a)1 Statement by a movant or by an opponent in a Local Rule 56(a)2 Statement, and each denial in an opponent's Local Rule 56(a)2 Statement, must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial. The affidavits, deposition testimony, responses to discovery requests, or other documents containing such evidence shall be filed and served with the Local Rule 56 (a)1 and 2 Statements in conformity with Fed. R. Civ. P. 56(e). Counsel and pro se parties 'are hereby notified that failure to provide specific citations to evidence in the record as required by this Local Rule may result in sanctions, including, when the movant fails to comply, an order denying the motion for summary judgment, and, when the opponent fails to comply, an order granting the motion.

> When a motion for summary judgment is supported by documentary evidence and sworn affidavits, the nonmoving party must present "significant probative evidence to create a genuine issue of material fact." Soto v. Meachum, Civ. No. B-90-270 (WWE), 1991 WL 218481, at *6 (D. Conn. Aug. 28,-1991). A party may not rely "on mere speculation or' conjecture as to the true nature of the facts to overcome a motion for summary judgment." Knight v. U.S. Fire Ins. Co., 804 F.2d 9, 12 (2d Cir. 1986), cert. denied, 480 U.S. 932 (1987)

A party may not create a genuine issue of material fact by presenting contradictory or unsupported statements. See Securities & Exchange Comm'n v. Research Automation Corp., 585 F.2d 31, 33 (2d Cir.'1978). Nor may he rest on the "mere allegations or denials" contained in his pleadings. Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995). See also Ying Jing Gan v. City of

New York, 996 F.2d 522, 532 (2d Cir. 1993) (holding that party may not rely on conclusory statements or an argument that the affidavits in support of the motion for summary judgment are not credible). A self-serving affidavit which reiterates the conclusory allegations of the I complaint in affidavit form is insufficient, to preclude summary judgment. See Lujan v. National Wildlife Fed'n., 4 97 U.S. 871, 888 (1990). .

FACTS

Based on defendants' Local 56(a)(1) Statement and exhibits and plaintiffs Local 56 (a) 2 Statement and exhibits, the following facts are undisputed.[3]

The Parties

1. Plaintiff Femi Bogle-Assegai is a resident of the State of Connecticut. [Pi. Local Rule 56(a)(1) Stat. Doc. #45-2, 51; Def. Local Rule 56(a)(2) Stat. Doc. #54, ¶]. She is an African American black woman

[3] The Court finds only those facts necessary to rule on the issues decided in this ruling.

of West Indian (Jamaican) descent. She is over forty (40) years old. [Compl. ¶11].

2. Plaintiff was hired by CHRO Executive Director Louis Martin on January 3, 1992. [Doc. #45-2, ¶2; Doc. #54, ¶2]. At the time of the termination of her employment, plaintiff was Regional Manager of the CHRO office in Waterbury, Connecticut. [Doc. #45-2, ¶11; Doc. #54, Sill].'

3. Defendant Cynthia Watts-Elder served as the Executive Director of the CHRO from March 1999 through August 2003. [Doc. #45-2, ¶3; Doc. #54, ¶3] .

4. Defendant Leanne Appleton served as the Fiscal Administrative Supervisor (Business Manager) for the CHRO from January 27, 1994, through 2004. [Doc. #45-2, ¶4; Doc. #54, ¶4].

5. Defendant Donald Newton has been employed by the CHRO for over thirty (30) years and, since fall

1999, has been serving as the Chief of Field Operations. [Doc. #45-2, ¶6; Doc'. #54, ¶6] .

Service of Process: Appleton and Newton

6. Service of process was effectuated against defendants CHRO, Watts-Elder, Appleton and Newton in their official capacity at the Office of the Attorney General on December 27, 2002. [Doc. #5].

7. Defendant Leanne Appleton was not personally served with process in this case and at no time did she authorize anyone to accept personal service of process on her behalf. [Doc. #45-2, ¶5; Doc. #54, ¶5] .

8. Defendant Donald Newton was never personally served with process in this case and at no time did he authorize anyone to accept personal service of process on his behalf. [Doc. #45-2, ¶7; Doc. #54, ¶7].

Filing of Administrative Charge

9. On March 29, 2001, Cynthia Watts-Elder informed plaintiff that her employment was terminated, effective April 12, 2001. [Doc. #45-2, ¶7, 93;. Doc. #54, ¶93]. The letter was hand delivered to plaintiff. [Def. Ex. 70].

10. The termination letter states in part, "Although your dismissal will be effective April 12, 2001, and you will [be] paid through that date, from this day forward, you will neither be expected (nor authorized) to report to work." [Def. Ex. 70].

11. Plaintiff filed her charge of discrimination directly with the EEOC on October 1, 2001, 186 days after receiving her employment termination notice on March 29, 2001. [Doc. #45-2, ¶121, Def. Ex. 70, 84].

12. On September 17, 2002, a "no cause" finding was issued by the EEOC. [Def. Ex. 84].

13. Plaintiff filed this federal action on December 24, 2002. [Doc. #1].

DISCUSSION

1. Service of Process: Appleton and Newton

Defendants Appleton and Newton contest personal jurisdiction under Rule 12(b) (5), based on lack of proper service of process.[4]

> A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5), must be granted if the plaintiff fails to serve a copy of the summons and complaint on the defendants pursuant to Rule 4 of the Federal Rules of Civil Procedure. Cole v. Aetna Life & Cas., 70 F. Supp. 2d 106, 109 (D. Conn. 1999). "Once validity of service has been challenged, it becomes the plaintiff's burden to prove that service of process was adequate." Id. at 110 (citations omitted).

It is undisputed that Appleton and Newton were not served in their individual capacities with the summons and complaint. See Fed. R. Civ. P. 4(e) and (f);. Conn. Gen. Stat. §52-57 (a). Both Appleton and Newton executed affidavits stating that they were not served personally and

[4] In the Amended Answer, defendants raised the issue of lack of personal jurisdiction pursuant to Rule 12(b) (4) and 12(b) (5). [Doc. #18 at 10].

no one was authorized to accept service of process for them in their individual capacities. [Doc. #45-2, ¶¶5, 7; Stat. Doc. #54, ¶¶5, 7]. Service through the CHRO in their official capacity is not sufficient is constitute personal service. Burgos v. Dep't of Children and Families, 83 F. Supp. 2d 313, 316 (D. Conn. 2000). Plaintiff concedes that defendants Appleton and Newton were only served in their official capacity.

Accordingly, he motion to dismiss is granted in favor of defendants Appleton and Newton in their individual capacities.

2. Eleventh Amendment

Defendants argue that the Eleventh Amendment bars suit against the CHRO and defendants Watts-Elder, Appleton and Newton in their official capacities.

suit in federal court by all private parties for all causes of action. Bd. of Trs. of the Univ. of Alabama v. Garrett, 531 U.S. 356, 363 (2001) Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 98 (1984). This immunity applies to state agencies and departments, as well state officials who act on its behalf. Burnette v. Carothers, 192 F.3d 52, 57 (2d Cir. 1999), cert. denied, 531 U.S. 1052 (2000); Gaynor v. Martin, 77 F. Supp. 2d 272, 281 (D. Conn. 1999). The CHRO is a state agency and is, therefore, covered by the Eleventh Amendment.

A state may be subject to suit in federal court one of two ways: (1) Congress can divest a state of immunity through a statutory enactment, as it has done with Title VII; or (2) a state may waive its immunity and agree to be sued in federal court. Close v. New York, 125 F.3d 31, 39 (2d Cir. 1997). However, a state may consent to suit in its own courts without consenting to suit in federal court. Smith v. Reeves, 178 U.S. 436, 441-45 (1900); Pennhurst, 465 U.S.

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equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

at 99; see also Great Northern Life Ins. Co. v. Read, 322 U.S. 47, 54 (1944) ("A clear declaration of the state's intention to submit its fiscal problems to other courts than those of its own creation must be found.").

Connecticut has not waived its immunity and consented to suit in federal court under § 1981 or §1983, and Congress's enactment of §1981 and §1983 did not override the immunity that the states and their agencies enjoy under the Eleventh Amendment, see, e.g., Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989); Quern v. Jordan, 440 U.S. 332, 343 (1979).

Plaintiff's state-law CFEA claims are similarly barred. Under Connecticut law, Conn. Gen. Stat. §§46a-99, 46a-100,[6] "Connecticut waived its immunity to suit in state court for CFEA claims. But it has not clearly expressed a waiver to suit in federal court. Therefore, the courts in this district have consistently found that CFEPA claims against the state and its agents are barred by the Eleventh Amendment." Alunghe v. Board of Trustees of the

[6] Conn. Gen. Stat. §46a-99 states:

Connecticut State University (CSU) System, 2 83 F. Supp. 2d 674, 687-88 (D. Conn. 2003) (citing Lyon v. Jones, 168 F. Supp. 2d 1, 6, (D. Conn. 2001)).

Any person claiming to be aggrieved by a violation of any provision of sections 46a-70 to 46a-78 . . . may petition the superior court for appropriate relief and said court shall have the power to grant such relief, by injunction or otherwise, as it deems just and suitable. Conn. Gen. Stat. §46a-100

Any. person who has timely filed a complaint with the Commission on Human Rights and Opportunities in accordance with section 46a-82 and who has obtained a release from the commission . . . [for] any action involving a state agency or official may be brought in the superior court for the judicial district of Hartford."

Moreover, courts in this district have held that Section. 46a-58 does not provide for a private cause of action under the statute. Garcia v. Saint Mary's Hosp., 46 F. Supp. 2d 140, 142 (D. Conn. 1999) ("Section 4 6a-58

claims must be brought through the CHRO's administrative procedures.") (citation omitted); Alungbe, 283 F. Supp. 2d at 687.; Lyon, 168 F. Supp. 2d at 6, n.2.

Accordingly, summary judgment on Counts Two, Four and Five is granted in favor of the CHRO and defendants Watts-Elder, Appleton and Newton in their official capacities.

3. Plaintiffs Title VII Claims Are Untimely

"Title VII requires aggrieved persons to file a complaint with the EEOC within one hundred and eighty days after the alleged unlawful employment practice occurred.'" Delaware State College v. Ricks, 449 U.S. 250, 258 (1980) (citing 42 U.S.C. §2000e-5 (e).[7] This limitations period is to be strictly construed. Lenox v. Unisys Corp. 32 F. Supp. 2d 44, 45 (D. Conn. 1999) (citing Economu v. Borg-Warner, Corp., 829 F.2d 311, 315 (2d Cir. 1987)

[7] Under certain circumstances, the filing period is extended to three hundred (300) days. 42 U.S.C. §2000e-5(e)(1) ("[E]xcept that in a case of unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice. . . ."). Here, plaintiff only filed a claim with the EEOC; thus the 180 days' limitations period applies.

(complaint dismissed, pursuant to Fed. R. Civ. P. 12(b)(6), where ADEA claim had been filed 301 days after plaintiff received termination notice)).

A claim of employment discrimination accrues on the date the termination decision is made and communicated to the employee. Ricks, 449 U.S. at 258. "The proper focus is on the time of the discriminatory act, not on the point at which the consequences of the act become painful." Chardon v Fernandez, 454 U.S. 6, 8 (1981) (citing Ricks, 449 U.S. at 258). It follows that "the last date of employment may not always coincide with the start of the 'statutory limitation clock." Lenox, 32 F. Supp. 2d at 45 (dismissing complaint where ADEA administrative charge was filed 321 days following receipt of his formal notice of. termination). Rather, "the limitation period begins to run on the date the employee receives definite notice of termination.'" Id. (quoting Economu v. Borg-Warner Corp., 829 F.2d 311, 315 (2d Cir. 1987)).

In this case, plaintiff received her formal notice of termination on March 29, 2001. [Def. Ex. 70]. The termination notice stated that she was no longer authorized to report to work after March 29, 2001. Id. Her administrative charge was filed on October 1, 2001, 186 days following her formal notice of termination. [Def. Ex. 70, 84]. Plaintiffs contention that the limitations period begins to run as of the effective date of her termination, April 12, 2001, is unsupported by the case law. Plaintiff also argues that, "[p]rovided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered for the purposes of determining liability." [Doc. #53 at 6 (citing National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002)). In this case, plaintiff's termination of employment was a discrete act. Only incidents that took place within the timely filing period are actionable. Plaintiff fails to identify any evidence in the record to support her claim of a "continuing violation" after March

29, 2001, the dated she received formal notice of termination. See National Railroad Passenger Corp., 536 U.S. at 114.

Accordingly, summary judgment shall enter in favor of defendant CHRO on the Title VII claims set forth in Counts One arid Three.

CONCLUSION

Accordingly, defendants' Motion for Summary Judgment Counts One through Five [Doc. #45] is GRANTED.

This is not a recommended ruling. The parties consented to proceed before a United States Magistrate Judge [Doc. #20] on September 11, 2003, with appeal to the Court of Appeals.

Dated at Bridgeport, this 10th day of March 2005.

/s/
HOLLY B. FITZSIMMONS
UNITED STATES
MAGISTRATE JUDGE